

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF UTAH, CENTRAL DIVISION  
3

4 Bell, et al.,

Civil No. 2:11-CV-00271

5 Plaintiffs,

6 v.

Judge Bruce S. Jenkins

7 Countrywide Bank NA, et al.,

8 Defendants.  
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14  
15 THURSDAY, SEPTEMBER 27, 2012

16 Status Report and Scheduling Conference  
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22 REPORTED BY: Michelle Mallonee, RPR  
23  
24  
25

APPEARANCES

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1 Thursday, September 27, 2012; Salt Lake City, Utah

2 1:20 p.m.

3 THE COURT: Good afternoon. And why don't we  
4 turn now to Bell and others versus Countrywide and  
5 others. It's 11-C-271, calendared for a status report  
6 and scheduling conference. Those who are making  
7 appearances, if you'll be kind enough to make a record  
8 for us. Tell us who you are and whom you represent.

9 MR. BATES: Abraham Bates on behalf of  
10 plaintiffs Timothy and Jennifer Bell.

11 MR. FARRAWAY: Wade Farraway on behalf of the  
12 State of Utah.

13 MS. MILLER: Amy Miller on behalf of the bank  
14 defendants.

15 THE COURT: Well, tell me where we are. The  
16 last meeting I had, someone suggested they were in the  
17 settlement mode.

18 MS. MILLER: Your Honor, we have conferred  
19 amongst ourselves and come up with a proposed --

20 THE COURT: I've seen the proposed order. But  
21 tell me what you really have to do, what you have to do  
22 by way of prep work.

23 MS. MILLER: Tell the Court what we have to do  
24 in terms of prep work? In terms of discovery, or in  
25 terms of something else?

1 THE COURT: We're talking about discovery, if  
2 any.

3 MS. MILLER: Well, we are ready to begin  
4 discovery. We've obviously briefed the --

5 THE COURT: Well, who do you propose to  
6 discover?

7 MS. MILLER: Through traditional means.

8 THE COURT: I'm sorry?

9 MS. MILLER: Through traditional means, your  
10 Honor.

11 THE COURT: Oh, yes.

12 MS. MILLER: Yes. Through written discovery.

13 THE COURT: Whatever.

14 MS. MILLER: And depositions.

15 THE COURT: No. What needs to be discovered in  
16 this case?

17 MS. MILLER: Well, we may let plaintiffs speak  
18 to that. But defendants would, obviously, like to depose  
19 the plaintiffs regarding their claims, especially on the  
20 loan modification and the promissory estoppel claims.

21 THE COURT: Okay. Do you have contact with your  
22 people?

23 MR. BATES: Yes, your Honor.

24 THE COURT: And they're available for discovery?

25 MR. BATES: They are, absolutely.

1 THE COURT: And they're available when? Any  
2 day?

3 MR. BATES: Yes.

4 THE COURT: Okay. Who besides the plaintiff?

5 MS. MILLER: In terms of depositions, not aware  
6 of any other individuals that we would --

7 THE COURT: Okay.

8 MS. MILLER: -- depose.

9 THE COURT: Let's fix a time when you can depose  
10 them. They're available any time. Would you like to  
11 depose them tomorrow?

12 MS. MILLER: No, your Honor, we would not like  
13 to depose them tomorrow. But we would like to depose  
14 them soon.

15 THE COURT: All right. Well, let's fix a time  
16 and place.

17 MS. MILLER: Your Honor, we would like to get  
18 some documents from the plaintiff before we conduct the  
19 deposition.

20 THE COURT: Okay. Now, which documents are you  
21 interested in?

22 MS. MILLER: The documents that they have in  
23 their possession regarding their communications with the  
24 Bank and their alleged attempts at a modification.

25 THE COURT: Okay. I put up here on my calendar

1 the Court's files in reference to this case. And you're  
2 talking about written communications?

3 MS. MILLER: Whatever they have in their  
4 possession, yes.

5 THE COURT: That they sent to the Bank?

6 MS. MILLER: Or amongst themselves or amongst  
7 their advisor that communicated on their behalf with the  
8 Bank.

9 THE COURT: Now, "the Bank." Which bank are we  
10 talking about?

11 MS. MILLER: Well, they were not very clear  
12 about that in their Complaint. And that is one issue  
13 that we'd like to clarify with them.

14 THE COURT: Okay. And other than that?

15 MS. MILLER: Other than the written discovery  
16 and depositions, we'll have to confer with our client.  
17 But we're not aware of any other types of discovery at  
18 this time.

19 THE COURT: Well, let's fix a time. When are  
20 your clients available?

21 MR. BATES: Your Honor, I presume they could  
22 make themselves available over the next few weeks.

23 THE COURT: Let's pick a convenient date so  
24 counsel may take their depositions. Any time the first  
25 week of October?

1 MS. MILLER: Your Honor, I am not available the  
2 first week in October.

3 THE COURT: Okay. The second week of October?

4 MS. MILLER: We would propose the first full  
5 week in November.

6 THE COURT: I'm sorry? You propose what?

7 MS. MILLER: Your Honor, we would like some  
8 written discovery before we take the plaintiff's  
9 deposition.

10 THE COURT: You're welcome to do that. But I am  
11 going to fix a time when you can discover. And I'm  
12 interested in getting your discovery over with. We're  
13 simply going to move ahead. This matter's been around  
14 here for a long time.

15 Are you available the second week of October?  
16 You have local counsel who is capable of running  
17 depositions as well.

18 MS. MILLER: Your Honor, again, before we take  
19 the depositions, we would like to take some written  
20 discovery and receive the plaintiff's documents.

21 THE COURT: I take it you don't want any  
22 discovery with the State of Utah. They're only  
23 interested here in a legal proposition.

24 MS. MILLER: We are not ruling out taking  
25 written discovery of the State of Utah as well.

1 THE COURT: Okay. Tell me who you want to  
2 discover. They're here for a limited purpose.

3 MS. MILLER: Well, we have the right, and we  
4 have the desire to serve written discovery on the State  
5 of Utah. And, based on the production of documents and  
6 responses to those discovery requests, we may also want  
7 to take depositions --

8 THE COURT: They were given the limited  
9 discretionary intervention right in this particular  
10 instance for a very limited purpose. They were  
11 interested in upholding the statute.

12 I take it the State has no discovery?

13 MR. FARRAWAY: Your Honor, if the State has any  
14 discovery, it would be with maybe some members of the  
15 ReconTrust as one of the defendants. But that would be  
16 probably pretty limited. Obviously the State's  
17 interest -- we'd like to see the trial occur sooner than  
18 later, and that would be the State's interest in  
19 upholding the statute. Obviously, there is a case,  
20 Garrett, which is up in the Tenth Circuit. And,  
21 obviously, that --

22 THE COURT: I'm familiar with the fact that  
23 there's a case in the Tenth Circuit. And I'm interested  
24 in getting this matter in a trial mode so we can get it  
25 tried.



1 MR. BATES: Your Honor, given that --

2 THE COURT: I'm sorry?

3 MR. BATES: Given that, defendants' argument on,  
4 essentially, a declaratory judgment claim is that the  
5 laws of the State of Texas control. I believe both my  
6 clients and the State of Utah have an interest in doing  
7 some discovery as to figuring out what exactly these  
8 ReconTrust officers and agents did or did not do in the  
9 State of Texas related to the trust property located  
10 within the state of Utah.

11 THE COURT: Haven't they already told you that?  
12 Have the plaintiffs --

13 MR. BATES: I --

14 THE COURT: -- heretofore --

15 MR. BATES: -- I don't believe so, not as to the  
16 individuals who executed the documents at issue; for  
17 example, the Substitution of Trustee, the Notice of  
18 Default, and the other nonjudicial foreclosure actions as  
19 to the trust property. We know very little, if anything.

20 THE COURT: I'm not concerned with everybody  
21 else. We're concerned with the plaintiffs.

22 MR. BATES: Understood. Would the Court --

23 THE COURT: When can you get your work done?

24 MR. BATES: I'm sorry?

25 THE COURT: How soon can you get your work done?

1           MR. BATES: In both written discovery and  
2 deposition?

3           THE COURT: How soon can you get your work done?

4           MR. BATES: Two months.

5           THE COURT: You've been here a couple of years.

6           MR. BATES: I understand. We are waiting for  
7 defendants to file their answer.

8           THE COURT: It took awhile. They were  
9 negotiating, they said. Were you negotiating with them?

10          MR. BATES: No, not negotiating with my clients.

11          THE COURT: I'm sorry?

12          MR. BATES: Not --

13          THE COURT: Was the State of Utah negotiating  
14 with them?

15          MR. FARRAWAY: Your Honor, there was some  
16 negotiation with ReconTrust, and they basically agreed to  
17 stop doing business in the state of Utah. Other than  
18 that negotiation, no.

19          THE COURT: That was a long time ago.

20          MR. FARRAWAY: Yes. Well, yes.

21          THE COURT: In the last three weeks, have you  
22 been negotiating with anybody?

23          MR. FARRAWAY: No, not the State of Utah and any  
24 of the defendants in this case.

25          MS. MILLER: That's not correct. I don't know

1 about the last two weeks, but certainly well up until the  
2 time that we served our --

3 THE COURT: Well, since July, there have been  
4 applications to extend the time to file an answer. And  
5 the justification used for extending the time to file an  
6 answer was that they were negotiating with the parties in  
7 the case.

8 MS. MILLER: Yes. And there were face-to-face  
9 meetings.

10 THE COURT: I'm sorry?

11 MS. MILLER: There were face-to-face meetings  
12 with lawyers of our firm and --

13 THE COURT: Why don't you tell me what they are?

14 MR. FARRAWAY: Your Honor, I think she's  
15 referring -- there was a meeting with some of the lawyers  
16 for ReconTrust with the attorney general, but not with  
17 the two attorneys assigned to the case, which is myself  
18 and Jerrold Jensen. But there were meetings that -- I do  
19 not know the nature of those meetings that occurred with  
20 the attorney general and, I believe, his chief deputy,  
21 John Swallow.

22 THE COURT: In the last what?

23 MR. FARRAWAY: I don't know. But no discussions  
24 have been held with the attorneys of record, which I am  
25 the newest one in the case. However, in talking with

1 Jerrold Jensen, there were no conversations with him as  
2 to any --

3 THE COURT: But the pleadings filed that the  
4 State stipulated to asserted that the time extension  
5 should be granted because negotiations were going on.

6 MS. MILLER: And, your Honor, that is correct.  
7 Members of the in-house legal department of Bank of  
8 America and partners of McGuire Woods met with members  
9 of --

10 THE COURT: Did any attorneys of record in this  
11 case meet?

12 MS. MILLER: Well, Attorney General --

13 MR. FARRAWAY: Well, Mr. Shurtleff --

14 MS. MILLER: Attorney General Shurtleff is  
15 attorney of record in this case.

16 MR. FARRAWAY: Yes.

17 THE COURT: Well, I'm going to find out, and I'm  
18 interested in having people tell me accurately if the  
19 justification set forth in the application for an  
20 extension for filing and answer actually occurred.

21 MS. MILLER: Your Honor, you have our  
22 representation that they occurred. There were phone  
23 calls, there were emails, there were letters, and there  
24 was a face-to-face meeting in hopes of reaching a  
25 resolution with the State of Utah. We were not able to

1 reach a resolution.

2 THE COURT: Well, people who come in this  
3 courtroom need to tell the Court the absolute straight  
4 story. And those who file pleadings in this courtroom  
5 need to tell the Court an absolute straight story. The  
6 Court relies upon officers of the court.

7 Well, the State doesn't have much of anything at  
8 this point to do. And Mr. Abraham indicates he can  
9 finish his work in 60 days. Is that adequate?

10 MS. MILLER: We don't believe that 60 days is  
11 enough time to serve written discovery, receive it, and  
12 take depositions. We would need longer than that. And I  
13 would point out that the proposed schedule that we filed  
14 yesterday was agreed by the other parties.

15 THE COURT: It contemplated a year to do  
16 something that ought to take a few days, frankly. And I  
17 won't sign off on the stipulation.

18 We'll fix some dates where you can get your work  
19 done, and then we'll set the matter for pretrial.

20 MS. MILLER: Well, we would recommend at least  
21 four months.

22 THE COURT: I'm sorry?

23 MS. MILLER: We would recommend at least four  
24 months to have discovery take place.

25 THE COURT: Well, as I view it, there's a not a

1 lot of discovery. There are not a lot of disputed facts  
2 that I can see.

3 MS. MILLER: The claims do not involve just the  
4 ReconTrust legal issue. The claims also involve the  
5 promissory estoppel claim.

6 THE COURT: Oh, I understand that.

7 File your written discovery by not later than  
8 the 15th of October. Complete your discovery by the end  
9 of the year. Post-discovery motions, if any, file them  
10 by the 14th of January. And let's pre-try the matter on  
11 Tuesday the 26th of February, 9:30 in the morning.

12 I'm interested in an agreed form of pretrial  
13 order, disputed issues identified; a roster of all your  
14 witnesses for your respective cases-in-chief, a roster of  
15 all your witnesses as well as your exhibits for your  
16 respective cases-in-chief; counsel prepared to talk  
17 theory, that's legal theory; authority, legal authority;  
18 and to talk facts, including expert opinions, if any.

19 If you'll get that to me the prior Thursday,  
20 namely, the 21st of February, signed off on by each of  
21 the attorneys, I'd appreciate that.

22 I'll ask counsel for plaintiff to prepare and  
23 submit a suggested form of order with those target dates  
24 and times. And I'd like counsel for the State of Utah  
25 and counsel for the defendants each to submit to me the

1 names of those purportedly engaged in settlement  
2 negotiations subsequent to the 20th of July of 2012. And  
3 if you'll do that within ten days, I'd appreciate it.

4 Anything else we need to talk about?

5 MR. BATES: No, your Honor.

6 MS. MILLER: No, your Honor.

7 THE COURT: Okay. Send me an order. Thanks a  
8 lot.

9 (The matter concluded at 1:43 p.m.)  
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CERTIFICATE

State of Utah                    )  
  ss.  
County of Salt Lake    )

I, Michelle Mallonee, a Registered  
Professional Reporter and Notary Public in and for the  
State of Utah, do hereby certify:

That the proceedings of said matter was  
reported by me in stenotype and thereafter transcribed  
into typewritten form;

That the same constitutes a true and correct  
transcription of said proceedings so taken and  
transcribed;

I further certify that I am not of kin or  
otherwise associated with any of the parties of said  
cause of action, and that I am not interested in the  
event thereof.

WITNESS MY HAND at Salt Lake City, Utah,  
this 28th day of September, 2012.

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Michelle Mallonee, RPR, CSR  
Utah CSR #267114-7801  
Expires May 31, 2014